

VENABLE[®] LLP575 SEVENTH STREET NW WASHINGTON, DC 20004
T 202.344.4000 F 202.344.8300 www.Venable.com

WC: 06-122

ACCEPTED/FILED

October 28, 2013

Julie Veach, Chief
Wireline Competition Bureau
Federal Communications Commission
Washington, DC 20554

Frederick M. Joyce

T 202-344-4653
F 202.344.8300
rjoyce@venable.com

APR 17 2014

Federal Communications Commission
Office of the Secretary**Re: In the Matter of Request for Review by Morris Communications, Inc. of
Decision of Universal Service Administrator; Filer ID 812163**

Dear Ms. Veach:

Morris Communications, Inc. ("Morris"), through its counsel, and pursuant to FCC Rule Sections 54.719, *et seq.*, hereby submits its appeal of the Universal Service Administrative Company's (USAC) August 30, 2013 letter decision (the "Decision"). A copy of the Decision is attached hereto. For reasons stated herein, Morris submits that the Decision is mistaken as a matter of law and fact, should be reversed, set-aside and cancelled.

Background

Morris hereby petitions the FCC to review and reverse USAC's decision to bill Morris for late payment penalties and interest arising from 2000 Universal Service Fund (USF) contribution calculations that were subsequently found to be mistaken. Morris previously appealed this matter directly to USAC by letter of November 16, 2012, a copy of which is attached hereto (the "Appeal"). USAC granted the Appeal in part, cancelling over \$31,000 in disputed USAC interest charges, but it denied the Appeal with respect to roughly \$153,000 in disputed USAC penalty and interest fees.

Summary of Appeal

USAC's decision is unlawful and should be set aside for the following reasons: (1) It is barred by the statute of limitations under the Communications Act of 1934; (2) USAC's imposition of a payment penalty against Morris is based upon unpublished USAC policies, making its actions *ultra vires* and unenforceable as a matter of law; (3) USAC's Decision to impose penalties and interest against Morris, over a disputed USF contribution calculation that was ultimately decided in Morris' favor, was entirely arbitrary and in violation of Morris' rights of administrative due process; and (4) USAC's decision ignores relevant facts concerning Morris' inability to pay the assessed USF fees.

No. of Copies rec'd 041
List ABCDE

October 28, 2013
Julie Veach, Chief
Wireline Competition Bureau
Page 2

USAC's Penalty is Time Barred

In its appeal to USAC, Morris explained to the Administrator that the disputed fees relate back to paging revenues and universal service contribution obligations that arose sometime in the year 2000. USAC evidently does not dispute these material facts, to quote from the Decision: "the relevant contribution amounts are from the 2000 Form 499-A, which reported 1999 calendar year revenue." Decision at p. 6, n. 26; and p 1, n.1 ("it is clear that the relevant contribution amounts are from 2000."). USAC also asserts that Morris incurred "undisputed universal service contribution charges" between January 2001 and December 2002, although Morris has disputed all of these outstanding charges. Cf. Decision at p. 4; Appeal at pp. 2-3.

The fact that USAC may have, to use its phrase, "recalled," re-billed or re-invoiced Morris Communications as recently as September of 2012 does not change the relevant dates for purposes of the statute of limitations. If Morris were ever in violation of the FCC's USF payment requirements, a fact that Morris has consistently and convincingly disputed for well over a decade, that forfeiture liability arose in the year 2000, the year in which the Universal Service Fund payment obligations would have accrued.

As Morris explained to USAC in its Appeal, the one year statute of limitations under Section 503(b)(6) of the Communications Act governs this dispute and is controlling. Appeal at p. 4. Inexplicably, USAC, well-represented by its own counsel and subject to the Communications Act and all of the FCC's regulations, conspicuously chose to ignore Morris' plain assertion of its statutory rights under the Communications Act. This is a particularly troubling omission given USAC's direct threat to take legal actions against Morris in an effort to recover these disputed USF charges. Decision at 3-4. If USAC were going to take the trouble to remind Morris of the government's debt collection authorities, one would have expected at least a passing explanation as to why, in USAC's view, the Communications Act's clearly-articulated statute of limitations would not bar USAC and the FCC from recovering disputed USF regulatory fees that, by USAC's own admission, are over a decade old. See Decision, p. 1, n. 1 ("it is clear that the relevant contribution amounts are from 2000.").

USAC is the administrative arm of the FCC for purposes of the Universal Service Fund. 47 C.F.R. § 54.701. As such, USAC is obligated to honor all provisions of the Communications Act and the FCC's regulations; it cannot "make policy" of its own or "interpret the intent of Congress." See 47 C.F.R. § 54.702. In particular, it cannot ignore statutory prohibitions such as those established under Title V of the Communications Act. It surely should not be allowed to

October 28, 2013
Julie Veach, Chief
Wireline Competition Bureau
Page 3

threaten legal action against an FCC licensee without at least attempting to explain why those actions are not in direct violation of a licensee's statutory rights under the Communications Act.

USAC must be familiar with the statute of limitations under the Communications Act given that the FCC has previously honored the statute in other USF collection matters where USAC was actively involved. For instance, in *Globcom Global Communications*, 21 FCC Rcd. 4710 (2006), the FCC issued a Notice of Apparent Liability against an interexchange carrier after "receiving information that Globcom had not paid its universal service fund contributions and that Globcom may have understated its revenues on its worksheets" *Id.* at 4713. Conceding that it had no statutory authority to impose any forfeitures against Globcom for USF payment obligations that were incurred more than one year prior to the issuance of the NAL, the Commission in that case merely "admonished Globcom for those apparent violations occurring beyond the statutory period." *Id.* at 4714.

In Morris' case, USAC issued no similar admonishments; instead, USAC threatened to turn the entire disputed balance over to the U.S. Department of Treasury for collection actions. Decision at p. 3. Perhaps USAC considers such a threat to be something akin to regulatory boilerplate language that it inserts into any USF dispute. Nevertheless, for the young widow and children who inherited these regulatory problems after their husband and father suddenly and tragically passed away, that threat of litigation has deeply shaken them. It is perhaps too much to expect a bureaucracy to apologize (USAC was informed about the passing of Morris' owner, H.A. "Trace" Morris, Appeal at p. 1, though the Decision makes no reference to this); but, it is not too much to expect USAC to honor FCC precedents, Congressional mandates and statutory law.

The *Globcom* case is by no means the only case where the FCC acknowledged that the Communication Act's statute of limitations is a complete bar against untimely USF collection or enforcement actions. In the recent case of *Inphonic, Inc.*, the Commission refused to impose USF payments or penalties against a telecommunications resale carrier other than "within the one-year period preceding the issuance of the NAL," even though in that case the carrier admitted that "it was late in complying with its regulatory and universal service obligations." *Inphonic*, 22 FCC Rcd. 8689 (2007).

It is important to stress that unlike in civil litigation where the statute of limitations is an affirmative defense that can be deemed waived if not timely asserted, *see Harris v. Sec'y, U.S. Dep't of Veterans Affairs*, 126 F.3d 339, 345 (D. C. Cir. 1997); that is not the case under the

October 28, 2013
Julie Veach, Chief
Wireline Competition Bureau
Page 4

Communications Act. Section 503(b)(6) of the Communications Act is an absolute bar against untimely FCC punitive actions. The statute could not be clearer: "No forfeiture penalty shall be determined or imposed against any person under this subsection if ... the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability." 47 U.S.C. § 503(b)(6).

This is statutory, it is mandated by Congress; this is not an FCC regulation or USAC "policy" that can be waived, modified or revoked at USAC's discretion. Consequently, the Decision is *ultra vires*, unlawful and must be set aside. See *City of Arlington, Texas v. Federal Communications Commission*, 133 S. Ct. 1863 (2013) (a federal agency's "power to act and how they are to act is authoritatively prescribed by Congress, so that when they act improperly, no less than when they act beyond their jurisdiction, what they do is *ultra vires*.").

USAC's Unpublished Billing Dispute Policies are Unenforceable

From the outset the treatment of Morris by USAC has been marked by a series of arbitrary, unpublished, and sometimes inexplicable procedures, none of which were ever subject to public notice or comment under the Administrative Procedures Act. This capricious conduct dates back to 2001, when Morris first attempted in good faith to notify the FCC and USAC of unintentional errors related to its USF reports. See Decision at pp. 2-3.

For years, USAC has either ignored Morris' efforts to fix an obvious filing mistake or it has asserted that relief could not be granted due to some informal USAC policy known to no one but USAC. See, e.g., Decision at 3, citing USAC's initial refusal to accept Morris' corrected USF filing "because it was submitted the form [sic] outside of the USAC Board of Directors 12 month revision deadline."

The *Decision* under review contains similar references to informal or unofficial USAC procedures and policies, none of which are enforceable as a matter of law. For instance, notwithstanding that Morris had repeatedly contacted USAC in an effort to submit corrected USF filings and pay accurate USF contributions, USAC apparently continued to assess a whopping seven percent annual interest against Morris while USAC took no action on Morris' appeal. Decision at p. 3. USAC also apparently decided that Morris was required to pay in full a USF contribution based on obviously incorrect USF forms during the many years that USAC refused to respond to Morris' attempts to fix this matter. *Id.* In 2005, after finally determining

October 28, 2013
Julie Veach, Chief
Wireline Competition Bureau
Page 5

that Morris was right all along, USAC inexplicably refused to set aside all penalties and interest that USAC had assessed against Morris. *Id.* at p. 5.

Apparently sometime in 2005, without any notice to Morris, USAC “recalled” from the FCC this on-going dispute, presumably concerned at last that it had inappropriately turned over to the FCC for collection litigation a matter that should have been resolved in Morris’ favor back in 2001. *Id.* What happened between 2005 and 2012 is anyone’s guess; USAC did not bother to explain this extraordinarily lengthy gap in its disturbing mishandling of Morris’ USF appeal. According to USAC, seven years later in June of 2012, “at the FCC’s direction, USAC [once again] recalled all the outstanding federal Universal Service contribution obligation amounts that USAC had previously transferred to the FCC back to USAC.” *Id.* Shortly thereafter, USAC “invoiced Morris for \$184,943.24,” consisting of “late payment interest and penalties” for the same disputed 2000 USF payment period. USAC apparently chose not to “toll” any of those penalties or interest notwithstanding the fact that it had obviously not acted on Morris’ still-pending appeal for at least seven years. In support of its actions, USAC referred to its website and to the “Billing Disputes” protocol that it has apparently published on the Internet. *Id.*

It probably goes without saying, but a thorough search of Part 54 of the FCC’s rules, “Universal Service,” fails to find any regulatory support for the manner in which USAC has handled Morris’ USF dispute for well over a decade. Apart from the possibility that interest and penalties may be assessed for “Failure to file the Telecommunications Reporting Worksheet or to submit required quarterly contributions,” 47 C.F.R. 54.713, there is no single FCC regulation that supports what USAC has attempted to do: sit on a USF appeal for over a decade, then penalize an FCC license to the tune of over \$100,000 for an unintentional filing mistake that could have been corrected in 2001 if USAC had simply done what Morris had asked it to do.

Last year the FCC publicly conceded that USAC’s self-made “pay and dispute” policy was never legally adopted by the FCC as either a formal regulation or an enforceable agency policy; only last year did the FCC for the first time provide formal notice to the public that it might consider adopting this informal USAC policy as a binding regulation. *See Universal Service Contribution Methodology*, 27 FCC Rcd. 5357 at ¶¶ 360-366 (April 30, 2012).

Given these facts it is particularly disturbing that USAC continued to argue in its letter to Morris that it has legal authority to impose these excessive penalties and interest by USAC. *Decision* at 7, n. 30. Indeed, USAC failed to mention in its letter to Morris’ Chief Financial Officer that the FCC had, several months prior to the release of USAC’s letter, issued a

October 28, 2013
Julie Veach, Chief
Wireline Competition Bureau
Page 6

rulemaking notice to consider formally adopting USAC's "pay and dispute policy" as a legitimate FCC regulation. Nor did USAC bother mentioning to Morris that numerous other carriers, including some of the largest telecom carriers in the United States, have complained to the FCC that USAC has no legal authority to impose its "pay and dispute policy" against USF contributors. See *Universal Service Contribution Methodology*, 27 FCC Rcd. 5357 at ¶ 364, citing *Level 3 Communications LLC*, 25 FCC Rcd. 1115 (Wireline Comp. Bur. 2010), application for review pending. Given USAC's threat to turn Morris over to the Treasury Department for legal action, its intentional omission of conspicuous and relevant legal authorities is troubling to say the least.

Suffice to say that USAC's informal practices and procedures violate fundamental regulatory requirements of public notice and comment under the Administrative Procedure Act. USAC's website-based "billing dispute" procedures have never been subject to mandatory regulatory review and cannot be the basis for this USF collection action against Morris. See, e.g., *Pac. Gas & Elec. Co. v. Fed. Power Comm'n*, 506 F.2d 33, 38 (D. C. Cir. 1974); *Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin.*, 452 F.3d 798, 807 (D. C. Cir. 2006) (if policy guidelines constitute a *de facto* rule then the APA would require the agency to afford notice of a proposed rulemaking and an opportunity for public comment prior to promulgating the rule).

USAC's Decision was Arbitrary and Violated Administrative Due Process

An agency action is arbitrary and capricious if the agency "has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983). Even though the scope of agency review by the Courts under the arbitrary and capricious standard is narrow and a court must not substitute its own view for that of an agency, an agency must still examine all relevant data and provide a "satisfactory explanation" for its action, including a "rational connection between the facts found and the choice made." *Id.*, quoting *Burlington Truck Lines v. U.S.*, 371 U.S. 156, 168 (1962). USAC's Decision comes nowhere close to meeting these precedential standards; rather, the actions taken against Morris by the FCC's agent, USAC, were obviously arbitrary and capricious and should be set aside.

The unofficial "pay and dispute" policy, the years' worth of inexplicable silence from USAC, the repeated "calls and recalls" between USAC and the FCC without any word to Morris

October 28, 2013
Julie Veach, Chief
Wireline Competition Bureau
Page 7

for more than a decade while penalties and interest steadily accrued, and ultimately the decision to impose substantial financial penalties against a financially distressed FCC licensee even after USAC conceded that the original problem was an honest mistake that had long ago been corrected, could not be "rationally" explained in any court of law. USAC's actions throughout this unfortunate matter have been the very definition of "arbitrary and capricious." No Court of Appeals would ever tolerate such conduct from a federal agency, nor should the FCC tolerate this conduct from USAC. USAC's Decision should be reversed, set-aside and permanently cancelled without any further delay.

Financial Hardship and Inability to Pay Disputed Amounts

In its Appeal, Morris previously explained to USAC that due to the well-known contraction of the radio paging industry, its financial condition has steadily eroded since the year that this regulatory escapade began. Appeal at pp. 1-3. While it is inconceivable that the USAC Decision could be found lawful by the FCC or any court of appeals, Morris hereby renews its request that the disputed USF contribution amounts be dismissed due to Morris' current financial status and its inability to pay. Ability to pay is a statutory factor that can and should be considered before any final action is taken in this matter. See *SBC Communications v. FCC*, 373 F.3d 140, 152 (D.C. Cir. 2004); and 47 U.S.C. § 503(b)(2)(D).

Conclusion

For all these reasons, Morris Communications respectfully requests the FCC to reverse, rescind and cancel USAC's Decision, and find that Morris Communications is current in its USF contribution payment obligations. If the FCC has any questions or requires additional information regarding this matter, please contact Morris Communications' undersigned counsel.

Sincerely,


Frederick M. Joyce
Counsel for Morris Communications, Inc.

attachments
cc: USAC



Universal Service Administrative Company

Administrator's Decision on Contributor Appeal

By Certified Mail

August 30, 2013

Mr. Jeff Chalmers
Chief Financial Officer
Morris Communications, Inc.
1720 Lakepointe Drive, Suite 100
Lewisville, TX 75057

Re: Morris Communications, Inc. (Filer ID 812163)
Letter of Appeal dated November 16, 2012

Dear Mr. Chalmers,

The Universal Service Administrative Company (USAC) has completed its evaluation of the appeal you submitted on behalf of Morris Communications, Inc. (Morris), dated November 16, 2012. The appeal concerns the DCIA recall of \$184,943.24 assessed on Morris's September 2012 USAC invoice. Morris's appeal letter states that the \$184,943.24 represents late payment penalties and interest on 2000¹ contribution amounts that were later reversed, as well as the 2000 contribution amounts themselves. The appeal requests that USAC reverse the late payment interest and penalties assessed on the contribution amounts that were later reversed. Morris also requests that USAC reverse the late payment penalties and interest attributable to the remaining, correct contribution amounts that were not reversed. In addition, Morris states that it does not have the resources today to make the contributions that are due based on its 1999² revenues, due to its sharply declining revenues over the past decade. Although Morris does not specifically make the request, USAC assumes that it was the company's intent to request relief from those contribution amounts as well.

As discussed in more detail below, USAC hereby grants the appeal with respect to the \$31,124.31 in interest charged on Morris's unpaid Third and Fourth Quarter 2000 federal Universal Service contribution obligations that were reversed after Morris submitted its revised 2000 FCC Form 499-A on March 29, 2002. USAC denies the appeal with respect to the remaining \$153,818.93 of unpaid federal Universal Service contribution

¹ In its appeal letter, Morris inconsistently referred to the time periods at issue, but it is clear that the relevant contribution amounts are from 2000.

² In its appeal letter, Morris inconsistently referred to the time periods at issue, but it is clear that the relevant contribution amounts are from the 2000 Form 499-A, which reported 1999 calendar year revenue.

Mr. Jeff Chalmers
Morris Communications, Inc.
August 30, 2013
Page 2 of 7

obligations that were correct and not reversed, and its related interest, which was recalled from the FCC and reflected on Morris's September 2012 invoice.

Decision on Appeal: Granted in part and denied in part.

Federal Communications Commission (FCC or Commission) regulations require that telecommunications carriers file an annual FCC Form 499-A. In addition, carriers are required to file quarterly FCC Forms 499-Q, unless they meet the *de minimis* exemption.³ USAC relies on revenue reported on the FCC Form 499-Q to bill each carrier its federal Universal Service contribution obligations. USAC relies on the annual FCC Form 499-A to reconcile billings for the previous year, as reported on the FCC Forms 499-Q.⁴

The 2000 FCC Form 499-A, which reported actual revenues for calendar year 1999, had a due date of April 3, 2000.⁵ Morris timely filed its 2000 FCC Form 499-A on March 20, 2000, reporting \$7,382,836 in total end-user revenues, of which \$885,941 and \$6,496,895 were interstate and international revenues, respectively. On April 10, 2000, USAC contacted Morris to confirm that the reported international revenues were correct, but USAC has no record of Morris responding to USAC's inquiry. As required by the FCC's⁶ rules, USAC relied on the actual revenues reported by Morris on its original 2000 FCC Form 499-A to calculate the company's monthly federal Universal Service contribution obligations for the third and fourth quarters of calendar year 2000, which totaled \$374,835.42.

On February 6, 2001, Morris sent a letter to USAC stating that it had made a mistake on its 2000 FCC Form 499-A by reporting its intrastate revenues as international, and that Morris would re-file its 2000 FCC Form 499-A.⁷ On March 29, 2002, Morris submitted a revised 2000 FCC Form 499-A reporting \$8,468,442 in total end-user revenues, of which

³ See 47 C.F.R. § 54.706(a) ("Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support mechanisms."). See also, 47 C.F.R. § 54.711(a) ("The Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator on a quarterly and annual basis."); 47 C.F.R. § 54.708 (providing that "[i]f a contributor's contribution to universal service in any given year is less than \$10,000 that contributor will not be required to submit a contribution or Telecommunications Reporting Worksheet for that year unless it is required to do so by our rules governing Telecommunications Relay Service, numbering administration, or shared costs of local number portability"). We note that regulations governing the Telecommunications Relay Service require all interstate telecommunications service providers to file at least an annual Telecommunications Reporting Worksheet (FCC Form 499-A). 47 C.F.R. § 64.604(c)(5)(iii)(A-B). Regulations governing local number portability and number administration require all telecommunications carriers providing service in the United States to complete an FCC Form 499-A. 47 C.F.R. §§ 52.32(b) and 52.17(b).

⁴ See generally 47 C.F.R. Part 54.

⁵ When a due date falls on a weekend or a holiday, the form is due the next business day. See 47 C.F.R. § 1.4(j).

⁶ See 47 C.F.R. §§ 54.709(a), 54.711(a) (1999).

⁷ See letter from H.A. Morris, President & CEO, Morris Communications, Inc. to USAC (February 6, 2001).

Mr. Jeff Chalmers
Morris Communications, Inc.
August 30, 2013
Page 3 of 7

\$1,016,213 and \$0 were interstate and international revenues, respectively. On May 15, 2002, USAC issued a letter to Morris rejecting its late filed 2000 FCC Form 499-A because it was submitted the form outside of the USAC Board of Directors 12 month revision deadline.⁸ On July 12, 2002 Morris sought FCC review of USAC's decision.

In 2007, the FCC, in its *Comprehensive Review Order*, directed USAC to assess late fees on all unpaid balances.⁹ Pursuant to the *Comprehensive Review Order*, failure to pay invoiced amounts when due will result in late charges being assessed on the amount outstanding.¹⁰ However, prior to the FCC's issuance of the *Comprehensive Review Order*, section 54.713 of the FCC's rules permitted USAC to charge an assessment for reasonable costs incurred due to late payments of contributions.¹¹ USAC applied this FCC rule and assessed the late payment fee based on a rate of interest of seven percent per year multiplied by the actual number of days a payment was late. USAC records show that Morris did not timely pay the federal Universal Service contribution obligations related to the company's 2000 FCC Form 499-A in full. As a result, beginning in August 15, 2000, Morris was assessed late payment interest and penalties totaling \$70,960.17.

Currently, any debt more than 120 days old will be transferred to the United States Department of Treasury for collection.¹² After July 1, 2003, but prior to May 2011, USAC was required to transfer any debt over 90 days old to the FCC for collection.¹³

⁸ See letter from USAC to Todd Hicks, Morris form preparer (May 15, 2002). See also *In the Matter of Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Changes to the Board of Directors of the National Exchange Carrier Associations, Inc.*, CC Docket Nos. 96-45, 98-171, 97-21, Order, DA 04-3669, 20 FCC Rcd 1012, 1015, ¶ 7 (2004) (noting that [t]o improve the accuracy of the revenues reported, the USAC Board of Directors authorized USAC to allow contributors to file new or revised Form 499-As after the original due date for a period of up to 12 months, i.e., March 31 of the subsequent year" and citing the July 27, 1999 minutes from the USAC July 1999 Board of Directors meeting) (*One-Year Revision Deadline Order*).

⁹ 47 C.F.R. § 54.713(b). See also, *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, et al., Report and Order, FCC 07-150, 22 FCC Rcd 16372, 16379; ¶ 14 (2007) (*Comprehensive Review Order*).

¹⁰ 47 C.F.R. § 54.713(b).

¹¹ 47 C.F.R. § 54.713. ("The Administrator may bill a contributor a separate assessment for reasonable costs incurred because of that contributor's filing of an inaccurate or untruthful worksheet, failure to file a worksheet, or late payment of contributions.")

¹² A debt transfer process was implemented pursuant to the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996) (DCIA). The DCIA requires, among other things, that federal agencies transfer debts delinquent over 180 days to the United States Department of Treasury (Treasury) for further collection action. The DCIA also allows agencies to transfer debts under 180 days to the Treasury. 47 C.F.R. § 1.1917(c).

¹³ See *In the Matter of Global Crossing North America, Inc., Global Crossing Telecommunications, Inc., Global Crossing Bandwidth, Inc., and Budge Call Long Distance, Inc.*, File Nos. EB-06-IH-5217, EB-07-IH-5217, Notice of Apparent Liability for Forfeiture, FCC 08-96, 23 FCC Rcd 6110, 6111-12, ¶ 3 n.11 (2008) ("Effective July 1, 2003, USAC implemented new collection procedures as required by the DCIA

Mr. Jeff Chalmers
Morris Communications, Inc.
August 30, 2013
Page 4 of 7

Pursuant to the Debt Collection Improvement Act (DCIA), in July 2003 USAC made a transfer to the FCC of Morris's outstanding federal Universal Service contribution charges and related interest and penalties, totaling \$531,049.09, of which \$445,795.59 related to Morris's disputed 2000 FCC Form 499-A filing. The other \$85,253.50 of unpaid debt transferred to the FCC was related to undisputed universal service contribution charges billed to Morris between January 2001 and December 2002. This resulted in a \$58,362.02 USAC federal Universal Service invoice balance, with all other amounts owed in full to the FCC.

On December 9, 2004 the FCC released the *One-Year Revision Deadline Order*, which among other things, adopted a one-year deadline for downward revisions to the FCC Form 499-A.¹⁴ The *One-Year Revision Deadline Order* also directed USAC to accept revised FCC Forms 499-A from prior years, provided that USAC received those revisions between the release date of the *One-Year Revision Deadline Order*, i.e., December 9, 2004, and the Order's effective date of January 10, 2005 (the Open Period),¹⁵ or prior to the release date of the *One-Year Revision Deadline Order* if USAC had not yet acted on the filing.¹⁶ The *One-Year Revision Deadline Order* required companies to demonstrate "good cause" for submitting a revision beyond the one-year revision window and permitted companies with pending revisions to supplement the record during the Open Period.¹⁷ Specifically, to establish good cause, a company was required to provide for each revision submitted:

- an explanation of the cause for any changes; and
- documentation demonstrating how the revised figures derived from corporate financial records.¹⁸

With respect to cases pending with the FCC that involved the FCC Form 499-A one-year filing deadline issue, the FCC remanded those cases to USAC for limited reconsideration. Specifically, the FCC explained that:

[t]o the extent that a request for review encompasses issues in addition to revised 499-A issues, we remand to USAC only the portion of the request that deals with revised 499-A filings, and retain the remainder of the request for disposition by the Bureau or Commission.¹⁹

and the Commission. Pursuant to those procedures, invoices for USF contributions that became over 90 days delinquent [were] transferred to the Commission for further collection.").

¹⁴ See generally, *One-Year Revision Deadline Order*

¹⁵ *Id.* at ¶ 14.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 1017-1018, ¶¶ 13, 14 ("USAC shall only revise contribution obligations to the extent that the carrier has provided accurate and legitimate reasons for filing late and for revising the obligation, in accordance with existing Worksheet Instructions.").

¹⁹ See *id.* at 1018, ¶ 13.

Mr. Jeff Chalmers
Morris Communications, Inc.
August 30, 2013
Page 5 of 7

Pursuant to the *One-Year Revision Deadline Order*, USAC reviewed Morris's revised 2000 FCC Form 499-A filing and supporting documentation. On July 22, 2005, USAC sent a letter to Morris stating that USAC had concluded that Morris established good cause for its proposed 2000 FCC Form 499-A revision, and that USAC would accept Morris's revised form for processing and revised billing.²⁰ Based on the revenue information reported in Morris's revised 2000 FCC Form 499-A, USAC recalculated the company's monthly federal Universal Service contribution obligations for the third and fourth quarters of calendar year 2000 to be \$18,151.77. USAC applied a total of \$356,683.65 in credits to Morris's July, August, and September 2005 invoice. However, USAC did not reverse any of the late payment interest and penalties assessed to Morris based on company's nonpayment of its third and fourth quarters of calendar year 2000 federal Universal Service contribution obligations.

In August, September and October 2005, USAC recalled from the FCC a total of \$337,590.91 of Morris's outstanding federal Universal Service contribution obligations, which represented the original federal Universal Service contribution obligations billed to Morris in the third and fourth quarters of calendar year 2000. USAC offset the recalled outstanding federal Universal Service amounts against Morris's USAC credit balance of \$356,683.65. This resulted in a \$3,815.17 balance on Morris's October 2005 USAC invoice, and a \$194,387.06 pending balance with the FCC.

In June 2012, at the FCC's direction, USAC recalled all the outstanding federal Universal Service contribution obligation amounts that USAC had previously transferred to the FCC back to USAC. As a result, in September 2012, USAC invoiced Morris for \$184,943.24,²¹ which consisted of the late payment interest and penalties calculated based on Morris's original third and fourth quarter of calendar year 2000 unpaid federal Universal Service contribution obligations, as well as \$113,983.07²² of other unpaid debt transferred to the FCC related to undisputed federal Universal Service contribution charges.

On November 16, 2012, Morris submitted an appeal letter to USAC requesting reversal of any late payment interest and penalties assessed on contribution amounts that were later reversed. The USAC website explains that late payment penalties will not be waived unless the dispute is determined to be the result of a USAC error.²³ USAC's acceptance of Morris's revised 2000 FCC Form 499-A submitted on March 29, 2002 demonstrated that Morris had good cause to file its revised 2000 FCC Form 499-A after

²⁰ See letter from USAC to Frederick M. Joyce and Ronald E Quirk, Jr, Counsel for Morris Communications, Inc. (July 22, 2005)

²¹ Between 2003 and 2009 USAC has transferred 15 debts to the FCC pursuant to the Debt Collection Improvement Act (DCIA) of Morris's outstanding federal Universal Service contribution charges and related interest and penalties totaling \$603,817.69. Before the September 2012 USAC had recalled \$377,006.07 of the debt and Morris had made \$41,868.38 in payments.

²² Total Recalled Debt – Total Interest Charges (\$184,943.24 – \$70,960.17 = \$113,983.07)

²³ See USAC Website, Billing Disputes, <http://www.usac.org/cont/about/program-integrity/appeals.aspx> (last visited June 19, 2012).

Mr. Jeff Chalmers
Morris Communications, Inc.
August 30, 2013
Page 6 of 7

the December 1, 2000 deadline and that the amounts owed on the originally filed FCC Form 499-A were not due. Therefore, USAC hereby grants Morris's appeal in part and will reverse all late payment fees associated with the incorrect third and fourth quarter contribution amounts from April 15, 2002 forward.²⁴ On Morris's September invoice USAC will reverse \$31,192.72 in late payment interest that was assessed on Morris's incorrect third and fourth quarter of calendar year 2000 contribution amount from April 15, 2002 through July 15, 2003.²⁵

In addition to the late payment fees, Morris requested relief from its corrected contribution principal and related interest and penalties for its inability to pay. Morris states that it does not have the resources today to make the contributions that are due based on its 1999²⁶ revenues and it would impose significant financial hardship if Morris was required to pay. To the extent that Morris's appeal requests equitable relief for the hardship imposed on the company by the application of the FCC-established universal service rules and orders, Morris must seek that relief from the FCC. USAC's review of the facts and circumstances pertaining to the remaining amounts transferred from the FCC back to USAC confirms that USAC has correctly applied the FCC orders and rules pertaining to the calculation and invoicing of Morris's federal Universal Service contribution obligations, assessment of applicable late payment interest and penalties, and transfer of Morris's delinquent debt to the FCC pursuant to the DCIA. Because the recalled amount represents appropriately assessed unpaid universal service contributions, late payment fees and penalties and there was no error on USAC's part, Morris's request that USAC reverse or reduce Morris's unpaid universal service debt is hereby denied.

As previously discussed, USAC is required to assess late payment interest against all federal Universal Service contributors that are more than 30 days delinquent in paying their federal Universal Service invoiced obligations,²⁷ and additional late payment penalties against all federal Universal Service contributors that remain more than 90 days delinquent in paying their federal Universal Service invoiced obligations.²⁸ The USAC website explains that late payment penalties will not be waived unless the dispute is determined to be the result of a USAC error.²⁹ The FCC has upheld USAC's pay and dispute procedure, finding that "[a]bsent enforcement of the pay and dispute procedure,...contributors may choose to engage in...nonpayment or underpayment of

²⁴ If USAC had originally accepted Morris's revised 2000 FCC Form 499-A submitted on March 29, 2002 the next invoice that USAC could have corrected Morris's account would have been April 15, 2002.

²⁵ July 15, 2003 is the date that USAC transferred Morris's unpaid third and fourth quarter's contributions to the FCC and the last day that USAC assessed interest on this debt.

²⁶ In its appeal letter, Morris inconsistently referred to the time periods at issue, but it is clear that the relevant contribution amounts are from the 2000 Form 499-A, which reported 1999 calendar year revenue.

²⁷ *Comprehensive Review Order*, 22 FCC Rcd 16372, 16379, ¶ 14.

²⁸ *Id.* at 22 FCC Rcd 16380-81, ¶ 16.

²⁹ See USAC Website, Billing Disputes, <http://www.usac.org/cont/about/program-integrity/appeals.aspx> (last visited June 19, 2012).

Mr. Jeff Chalmers
Morris Communications, Inc.
August 30, 2013
Page 7 of 7

invoices with which they disagree, thereby harming the predictability of the fund.”³⁰
USAC’s website provides guidance that specifically advises contributors who intend to file appeals that they must keep their accounts current or risk receiving late payment fees.³¹

USAC’s records indicate that Morris failed to timely pay the September 2012 USAC invoice. As a result, Morris incurred late payment penalties totaling \$18,945.37, as reflected on its November 2012 through August 2013 invoices. USAC wishes to advise Morris that it will continue to receive late payment penalties related to its unpaid delinquent debt until the invoiced balance is paid in full.

If you wish to appeal this decision, you may file an appeal pursuant to the requirements of 47 C.F.R. Part 54, Subpart I. Detailed instructions for filing appeals are available at:

<http://www.usac.org/cont/about/program-integrity/appeals.aspx>

Sincerely,

USAC

cc: Christopher Tai, counsel for Reliance Communications International, Inc. (by email only)
Cheryl Collins, FCC Office Managing Director
Terry Cavanaugh, FCC Enforcement Bureau
Pamela Kane, FCC Enforcement Bureau
William Kehoe, FCC Enforcement Bureau
Vickie Robinson, FCC Wireline Competition Bureau
Chin Yoo, FCC Wireline Competition Bureau
Erica Myers, FCC Wireline Competition Bureau
Linda Parks, American Messaging Services, LLC
Jacleen Morris, Morris Communications, Inc.

³⁰ *In the Matter of Universal Service Contribution Methodology Requests for Waiver of Decisions of the Universal Service Administrator by ComScape Telecommunications of Raleigh-Durham, Inc. and Millennium Telecom, LLC*, WC Docket No. 06-122, Order, DA 10-1050, 25 FCC Rcd 7399, 7401, ¶ 7 (2010); *accord In the Matter of Universal Service Contribution Methodology Emergency Request for Review of Universal Service Administrator Decision by Level 3 Communications, LLC et al.*, WC Docket No. 06-122, Order, DA 10-187, 25 FCC Rcd 1115, 1120, ¶ 9 (2010) (finding that the carrier “could have avoided incurring late fees, penalties, and interest charges from which it seeks relief by paying the full invoiced amount in compliance with USAC’s ‘pay and dispute’ policy”); *In the Matter of Federal-State Joint Board on Universal Service Request for Review of Decision of the Universal Service Administrator by Global Crossing Bandwidth, Inc.*, CC Docket No. 96-45, Order, DA 09-1821, 24 FCC Rcd 10824, 10831 (2009) (explaining that “to ensure the sufficiency of the universal service fund, contributors are required to pay disputed invoices under the ‘pay and dispute’ policy” and finding that the carrier should have paid its disputed invoices while its appeal was pending with the FCC).

³¹ See USAC Website, Program Integrity - Appeals, <http://www.usac.org/cont/about/program-integrity/appeals.aspx> (last visited Jan. 30, 2013).

November 16, 2012

Universal Service Administrative Company
Letter of Appeal
Billing, Collections, and Disbursements
2000 L Street NW, Suite 200
Washington, DC 20036

**RE: Letter of Appeal on behalf of Filer ID 812163 - Morris Communications, Inc.
CC Docket No. 96-45**

To Whom It May Concern:

This is to appeal USAC's decision on September 24, 2012, to bill Morris Communications, Inc. ("Morris") for late payment penalties and interest on 2001 contribution amounts that later were reversed, and also to bill Morris in 2012 for contributions from 2001, eleven years later, when the company's revenues are substantially lower and the company is no longer able to pay.

Background

Morris Communications Inc. was run effectively as a corporation until the death in 2011 of Mr. H. A. Morris. Following Mr. Morris's death, American Messaging Services (AMS) was retained effective February 1, 2012 to provide management services to the company. AMS has limited access to Morris's records from prior to this year. AMS is doing its best to pull the company's affairs into order since it became manager.

Since AMS assumed management responsibilities, Morris Communications has always paid its USAC account current each month.¹ AMS was unaware that an outstanding balance had previously been transferred to USAC, until the September 2012 invoice showed a charge for a "DCIA Transfer Reversal" of \$184,943.24. AMS, on behalf of Morris, immediately contacted USAC to investigate the charge. AMS's Manager of Taxation exchanged several emails with USAC staffer Rich

¹ On the January 2012 invoice, there was an outstanding balance of \$8,868.55. Morris paid the monthly amounts while investigating with USAC staff the nature of the past due amount. By May 2012 the past due amounts had been researched and were paid on May 15, 2012. The June 2012 invoice showed a balance forward of only the current amount due for that month.

Seebo, and then on November 2, 2012 had a telephone conversation with Mr. Seebo and Fred Theobald. Based on these interactions, the company's understanding of the charges is as follows:

- On its 2000 Form 499-A, Morris mistakenly reported all of its intrastate revenues as international. This generated total USF charges of \$374,835.43, which were billed to Morris on its July – December 2000 invoices. Though consistent with the company's filing, these charges were inaccurate because intrastate revenue is not subject to the federal USF.
- On March 25, 2002, Morris submitted a revised 2001 Form 499-A to correct the error.
- On May 15, 2002, USAC rejected the revised filing because it was not filed within one year of the original submission, as required by USAC policy at the time.
- On December 9, 2004, the FCC's Wireline Competition Bureau released an Order (DA 04-3669) which adopted USAC's one-year policy going forward and provided USAC direction regarding how to handle prior revisions that had been submitted more than a year after the filing due date.
- In light of the Bureau's direction, USAC reviewed the information submitted by Morris and on July 22, 2005 sent a letter to Morris's then-counsel explaining that USAC had accepted Morris's revised 2000 FCC Form 499-A. USAC then proceeded to process the revised form and issued Morris credits totaling \$356,683.69 on Morris's July, August, and September 2005 invoices.
- USAC did not make any adjustments to any late payment fees incurred by Morris for non-payment of their original charges calculated from their 2000 FCC Form 499-A.
- In 2004 and 2005, USAC transferred Morris's past-due balances to the FCC for collection.
- In September 2012, the FCC transferred the past-due balance back to USAC, and USAC put the charge on Morris Communications' September 2012 bill.

Since 2000, Morris's revenues have fallen precipitously. In 2001, Morris's revenues were \$10,841,694², while projected 2012 revenues are only \$1.9 million. This is consistent with the overall decline in revenues in the paging industry generally, which fell from over \$3 billion in 2000 to only \$361 million in 2009.³

² Morris USAC 499A, line 419a

³ Universal Service Monitoring Report (2011) at Table 1.3.

Penalties and Interest on Reversed Contribution Amounts

Based on conversations with USAC staff and our review of the materials available to us regarding the amount transferred, it appears that the transfer included late payments and interest on the amounts that were originally billed for 2001, but reversed in 2005.

It is patently unjust to assess late payment penalties and interest on any contribution amounts that were later reversed. Accordingly, AMS, on behalf of, and at the direction of Morris submits this appeal of USAC's decision to bill Morris for any late payments penalties or interest attributable to the contribution amounts that later were reversed, and requests that any such amounts be removed from the Morris bills.

Penalties and Interest on Past-Due Contribution Amounts

Morris also requests that USAC reverse the penalties and interest that were imposed on the amount that was actually due based on the corrected filing. Morris did not comply with USAC's "pay and dispute" policy; however, given the magnitude of the error, it does not appear that the company could have paid the amounts billed without placing the company into serious financial jeopardy.

Moreover, Morris's revenues are currently a small fraction of their 2000 levels. It would be unduly punitive to impose late payment penalties and interest on the company today based on even its corrected contribution amount from 2000. Accordingly, Morris requests the removal of all late payment penalties and interest, including amounts attributable to the corrected revenue amount.

Reduction of Corrected Contribution Principal for Inability to Pay

As noted above, between 2001 and 2012, Morris was managed by Mr. H. A. Morris, who is now deceased; AMS became manager of the company within the past year, and has limited access to Morris's records from prior years. AMS is therefore unable to determine the extent to which Morris was informed of the transfer of the debt to the FCC or the pendency of the debt at the FCC in the interim.

In any event, however, Morris does not have the resources today to make the contributions that are due based on its 2000 revenues. As noted above, Morris's revenues have fallen sharply over the last decade, consistent with the general decline of the paging industry. It would impose a significant financial hardship on Morris to require it to contribute to universal service, in 2012, based on its (much higher) revenues in 2000.

Statute of Limitations

Under Section 503(b)(6) of the Communications Act, 47 U.S.C. §503(b)(6), the FCC may only propose forfeitures for apparent rule violations that accrued within one year of the date of the FCC's notice of apparent liability. *See, e.g., OCMC, Inc., Notice of Apparent Liability for Forfeiture, FCC 05-157 (August 12, 2005).* USAC's authority does not exceed the FCC's statutory authority. All of the disputed matters that USAC has addressed in its correspondence occurred well prior to expiration of this statute of limitations. Therefore, while Morris Communications does not concede that it should be subject to any NAL for reasons previously stated, in any event the FCC is statutorily barred from imposing any sanctions against Morris Communications for any USF payment violations that occurred well over one year ago.

Please let us know if there is anything further that we could provide to assist in this matter. Our contact information is listed below.

Very truly yours,

Morris Communications, Inc.
By its Manager/Agent
American Messaging Services, LLC

Linda Parks
Manager of Taxation
American Messaging Services, LLC
1701 Lakepointe Dr., Suite 100
Lewisville, TX 75057
Linda.parks@americanmessaging.net
(Phone) 214-222-6385
(FAX) 214-222-6387

Jeff Chalmers
SR VP, CFO
American Messaging Services, LLC
1701 Lakepointe Dr., Suite 100
Lewisville, TX 75057
jeff.chalmers@americanmessaging.net
(Phone) 972-353-1882

Jacleen Morris
Morris Communications, Inc.
533 Woodruff Road
Greenville, SC 29607